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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 9, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 110d-041

OAHU

Grant of Two (2) Perpetual, Non-Exclusive Easements to Olomana Estates, LLC for Access and Utility Purposes; Possible Executive Session with Deputy Attorney General on Legal Issues and Litigation; Waimanalo, Koolauloko, Oahu, Tax Map Key: (1) 4-1-15:por. 16

APPLICANT:

Olomana Estates, LLC, a domestic limited liability company

LEGAL REFERENCE:

Section 7-1, 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolauloko, Oahu identified by Tax Map Key: (1) 4-1-015:portions of 016, as shown on the attached map labeled **Exhibit A**.

AREA:

Access purposes - 3,722 square feet, more or less
Utility purposes – to be determined. See Remarks Section

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: F-1

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

1. Right, privilege and authority to construct, use, maintain and repair a right-of-way over and across State-owned land for access purposes.
2. Right, privilege and authority to construct, use, maintain and repair a right-of-way over and across State-owned land for utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Access

Gratis. The dominant property is a kuleana lot, as confirmed by staff abstractor's report attached as **Exhibit B**.

Utility

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

[Note: Staff consulted with the Department of the Attorney General and learned that the kuleana right holder can only enjoy a vehicular access easement at gratis, while payment of a fair market value of the utility easement is required.]

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The subject area is part of the Hawaii National Guard Bellows AFS Regional Training Institute Complex project. Finding of No Significant Impact of the project was published on OEQC's Environmental Notice dated June 8, 1999.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u> </u>
Registered business name confirmed:	YES <u>x</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of fair market value for the utility easement;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 3) Process and obtain approval at the City and County of Honolulu regarding the designation of the easements at Applicant's own cost.

REMARKS:

The subject location is identified as Parcel 3D, with an area of about 3,722 square feet. The land was returned, together with other parcels, to the State by the federal government as surplus by Land Office Deed 27839 dated September 14, 1990.

Around 1999, the State Department of Defense was building a new training facility on a portion of the adjacent Bellows Air Force Station. The construction also included improvement over an area connecting the Kalanianaʻole Highway. The improvement was done on Parcels 3D and B4, as shown on the map attached as Exhibit A, and it is being used by the National Guard.

In 1999, the federal government conveyed the property identified as tax map key (1) 4-1-015:017 to Myron Nakata by a quitclaim deed dated July 30, 1999, reserving a non-exclusive 44 foot wide easement comprising all of Parcel B4, allowing vehicular and utility access to property currently owned by the federal government, including the Bellows Air Force Station.

In 2009, Olomana Estate, LLC ("Olomana") became the current owner of tax map key (1) 4-1-015:017.

Under a quiet title action, *Olomana Estates, LLC v. Heirs and Assigns of Kiha, et al.*, Civil No. 09-1-2827-12 PWB, Olomana notes that it does not have any legal access connecting its lot to the public road. Therefore, Olomana requests the Board authorize the issuance of a perpetual non-exclusive easement for access purpose over parcel 3D, which is further identified as tax map key (1) 4-1-015-016 (por.).

In addition, Olomana requests another easement for utility purposes. While the width of the utility easement will be narrower than that of the access easement, the exact figure will be determined at a later date. The location of the requested utility easement will be over parcel 16. Staff will work with the State Survey Division and the applicant's land surveyor regarding the exact area.

According to the Deputy Attorney General representing the State in the above mentioned lawsuit, a court hearing is scheduled in early June and the requested easements will be an issue to be addressed at the court hearing. The Deputy Attorney General and the attorney representing Olomana agreed to request the Board for the access easement under today's agenda. If necessary, the Deputy Attorney General can brief the Board regarding the lawsuit during an executive session.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Department of Hawaiian Home Lands, State Department of Defense, and Department of Facility Maintenance have no objection or comment on the request. Department of Health and Office of Hawaiian Affairs have not responded as of the suspense date.

Board of Water Supply advises the staff of the existing waterline and isolation valve at the location, and Department of Transportation requires access permit connecting the access easement area and Kalaniana'ole Highway.

Department of Planning and Permitting advised the staff that they would be unable to process the designation of easements because the parcels involved are non-recognized parcels. The information has been conveyed to Olomana and staff understands that Olomana will meet with the City trying to resolve the issue.

There no other pertinent issues or concerns and staff does not have any objection to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-1-015:017, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of two (2) perpetual non-exclusive easements to Olomana Estates, LLC covering the subject area for access and utility purposes respectively under the terms and conditions cited above, which are by this reference incorporated

herein and further subject to the following:


- A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
- B. The easements shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-1-015:017, provided however: (1) it is specifically understood and agreed that the easements shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easements are sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



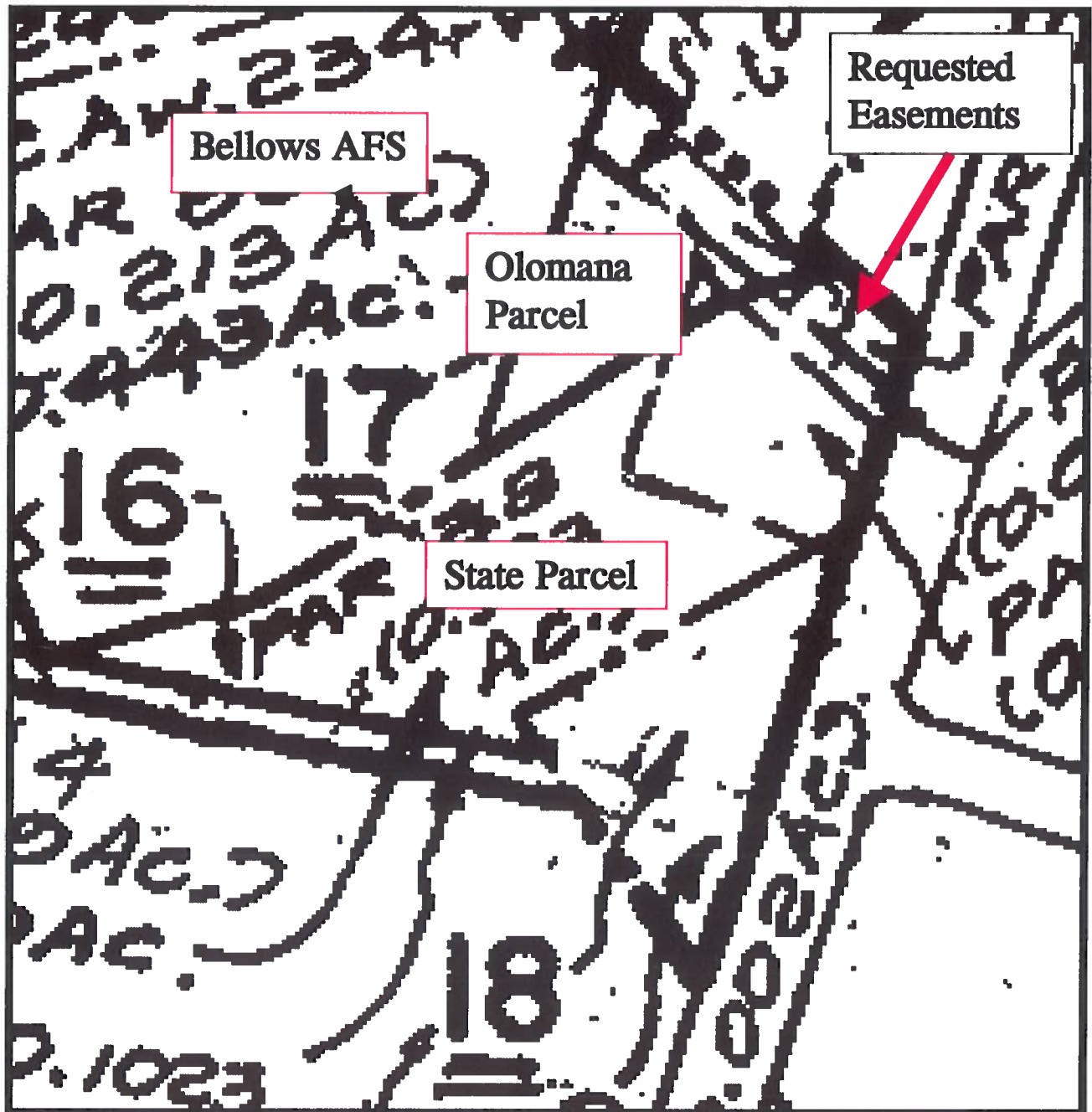
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

BLNR - Issuance of Easement
to Olomana Estates, LLC



TMK (1) 4-1-015:016

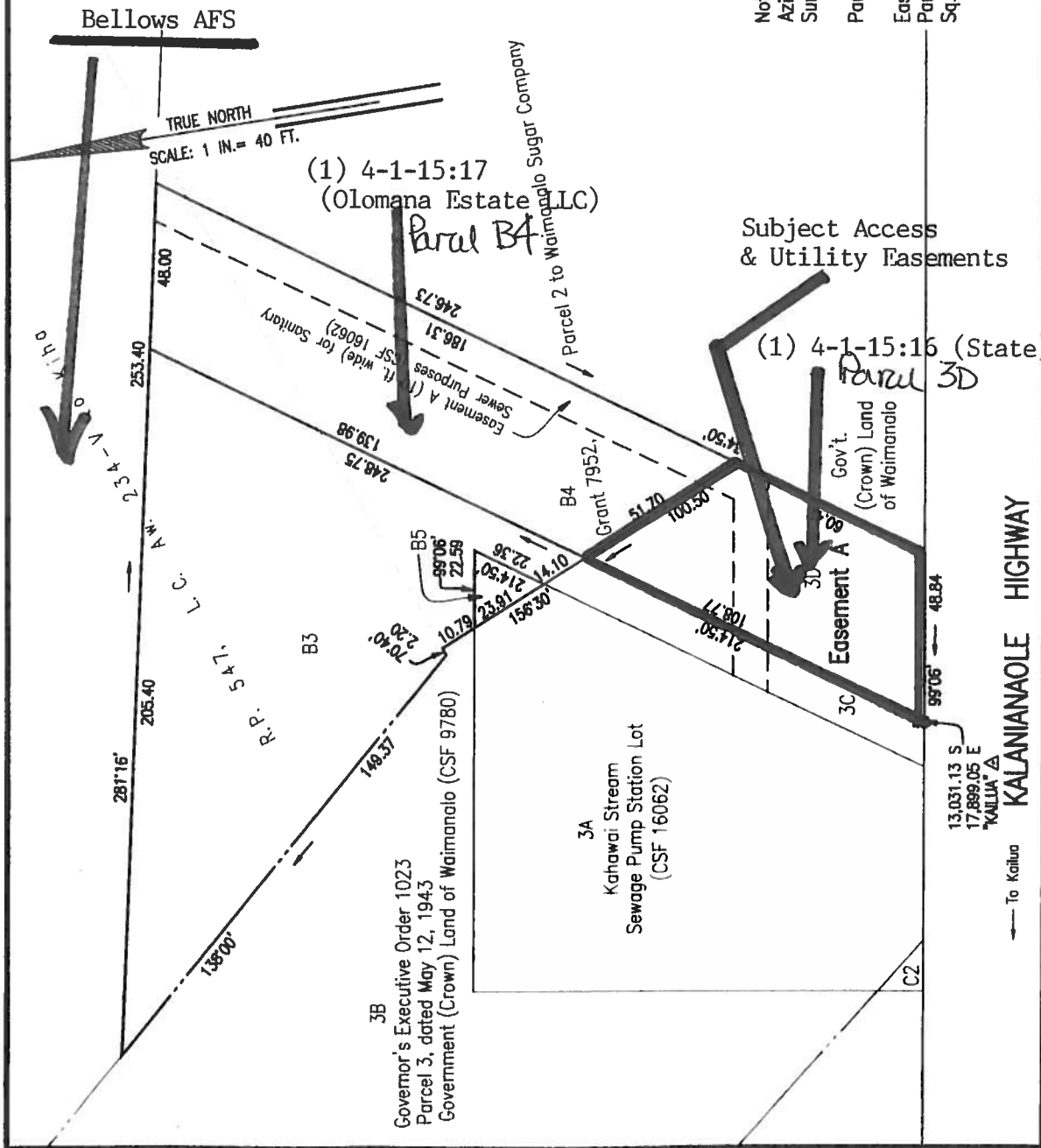
EXHIBIT A1

**Designation of
Easement A
for Access and Utility Purposes
At Waimanalo, Oahu, Hawaii
Tax Map Key: (1)4-1-15: 16 & 17**

This map was prepared by me
or under my direct supervision

Ryan M. Suzuki
Licensed Professional Land Surveyor
Certificate Number 10059
4/30/12
Expiration Date

Notes:
Azimuths and coordinates are referred to Government
Survey Triangulation Station "Kailua" Δ
Parcel 3D is Ceded lands.
Easement A for Access and Utility Purposes affecting
Parcel 3D in favor of Parcels B3, B4 and B5 = 3,722
Sq. Ft.



2024 N. King Street, Suite 200
Honolulu, Hawaii 96819
March 1, 2011

R. M. TOWELL CORPORATION
SINCE 1908



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 8, 2010

10392(O)

MEMORANDUM

TO: Pamela K. Matsukawa, Deputy Attorney General

THROUGH: Morris M. Atta, Administrator

FROM: E. Mahoe Collins, State Abstractor

SUBJECT: Quiet Title Action – First Circuit Court Civil No. 09-1-2827-12 DHMC, in re Olomana Estates, LLC vs. Heirs and Assigns of Kiha, et al.

We have been requested to assist in determining whether the State of Hawaii may claim any interest in and to the real properties described in the Verified Complaint to Quiet Title and Partition filed December 7, 2009, in the subject proceeding as follows:

Parcel B3

Being portions of Royal Patent 547, Land Commission Award 234-V to Kiha and Grant 7952, Parcel 2 to Waimanalo Sugar Company, same being portion of Parcel B, U.S. Civil No. 488 (C.S.F. 9780), at Waimanalo, Oahu, Hawaii, containing an area of 0.273 Acre.

Parcel B4 (44-Foot Right of Way)

Being portions of Royal Patent 547, Land Commission Award 234-V to Kiha and Grant 7952, Parcel 2 to Waimanalo Sugar Company, same being portion of Parcel B, U.S. Civil No. 488 (C.S.F. 9780), at Waimanalo, Oahu, Hawaii, containing an area of 0.165 Acre.

Parcel B5

Being a portion of Grant 7952, Parcel 2 to Waimanalo Sugar Company, same being portion of Parcel B, U.S. Civil 488 (C.S.F. 9780), at Waimanalo, Oahu, Hawaii, containing an area of 227 square feet or 0.005 acre.

EXHIBIT "B"

Said Parcels B3, B4 and B5 comprise all of Tax Key Parcel (1) 4-1-015: 017, containing an area of 0.443 acre, as shown colored in red on the map attached hereto as Exhibit A.

Parcel C1

Being a portion of Royal Patent 3231, Land Commission Award 10215 to Mauae 2, same being also a portion of Parcel C of U.S. Civil No. 488 (C.S.F. 9780), dated April 13, 1943, at Waimanalo, Oahu, Hawaii, containing an area of 0.475 Acre.

Parcel C2

Being a portion of Royal Patent 3231, Land Commission Award 10215 to Mauae 2, same being also a portion of Parcel C of U.S. Civil No. 488 (C.S.F. 9780), dated April 13, 1943, at Waimanalo, Oahu, Hawaii, containing an area of 98 square feet or 0.002 acre.

Said Parcels C1 and C2 comprise all of Tax Map Key Parcel (1) 4-1-015:18, containing an area of 0.447 acre, as shown colored in orange on said Exhibit A.

Said Complaint further asserts the Plaintiff's kuleana access rights, and prays for the granting of its entitlement to an access easement over and across TMK: (1) 4-1-015:16 for vehicular access from its kuleana parcel to the government road.

An examination of the records and files located in our office reveal the following interest(s) of the State of Hawaii in and to the said real properties:

As to Parcels B3, B4 and B5 (TMK: (1) 4-1-15: 17):

The mineral and metallic mines as excepted and reserved in favor of the Hawaiian Government as recited in Royal Patent No. 547 to Kiha dated September 6, 1851.

We note that Land Commission Award No. 234-V to Kiha is a kuleana entitled to access rights pursuant to the Kuleana Act of August 6, 1850 and in accordance with Chapter 7-1 of the Hawaii Revised Statutes.

As to Parcels C1 and C2 (TMK: (1) 4-1-15: 18):

The mineral and metallic mines as excepted and reserved in favor of the Hawaiian Government as recited in Royal Patent No. 323 to Mauae dated July 3, 1851.

10392(O)
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As to TMK: (1) 4-1-15: 16:

Pursuant to § 5(b) of the Admissions Act of March 18, 1959 (Pub L 86-3, 73 Stat 4), the State of Hawaii owns that portion of the Government (Crown) Land of Waimanalo, designated as Tax Map Key Parcel (1) 4-1-15:16, as shown colored in green on said Exhibit A.

If you have any questions and or concerns, please feel free to contact me at 587-0458.

Enclosure